UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,535	06/29/2001	James S. Magdych	NAI1P009/01.114.01	6510

28875	7590	11/15/2004	EXAMINER

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ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/895,535	MAGDYCH ET AL.
	Examiner	Art Unit
	Benjamin A Ailes	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*29 June 2001*</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>*1-23*</u> is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>*1-23*</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>*29 June 2001*</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-23 have been examined.

2.   The specification has not been checked to the extent necessary to determine the

presence of all possible minor errors. Applicant's cooperation is requested in correcting

any errors of which applicant may become aware in the specification.

Priority

3.   No claim for priority has been made in this application.

4.   The effective filing date for the subject matter defined in the pending claims in

this application is 06/29/2001.

Drawings

5.   The Examiner contends that the drawings submitted on 06/29/2001 are

acceptable for examination proceedings.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

7.   Claims 8-14 and 23 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. The computer program as claimed

is considered non-statutory subject matter since it does not fall into any of the following

statutory categories: new and useful process, machine, manufacture, or composition of

matter, or any new and useful improvement thereof.

8.   Claims 15-21 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. The logic as claimed is considered non-

statutory subject matter since it does not fall into any of the following statutory

categories: new and useful process, machine, manufacture, or composition of matter, or

any new and useful improvement thereof.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10.   Claims 1-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Klaus

(U.S. Patent Number 5,892,903), hereinafter referred to as Klaus.

11.   Regarding claims 1, 8, 15, 22, and 23, Klaus teaches a risk assessment scan,

comprising:

- Selecting a plurality of risk-assessment modules... (see abstract);

- Determining a first set of ports... (col. 7, lines 41-45);

- Executing a port scan... (col. 7, lines 41-45 and col. 11, line 59 – col. 12, line 27);

- Determining a second set of ports based on the port scan... (col. 7, lines 48-60 and col. 11, lines 32-58); and,

- Disabling the risk-assessment modules... (col. 7, lines 52-60).

12.   Regarding claims 2, 9, and 16, in accordance with claims 1, 8, and 15,

respectively, Klaus teaches the method wherein a plurality of the modules each have

the same port associated therewith, and redundancy in the first set of ports is removed

prior to executing the port scan (col. 7, lines 56-60).

13.   Regarding claims 3, 10, and 17, in accordance with claims 1, 8, and 15,

respectively, Klaus teaches the method wherein the modules are user-specified (see

abstract and col. 15, line 63 – col. 16, line 28).

14.   Regarding claims 4, 11, and 18, in accordance with claims 1, 8, and 15,

respectively, Klaus teaches the method further comprising storing a third set of ports

including the first set of ports and excluding the second set of ports (col. 7, lines 48-60)

A third set of ports is created automatically by the method disclosed by Klaus of

mapping the ports.

15.   Regarding claims 5, 12, and 19, in accordance with claims 4, 11, and 18,

respectively, Klaus teaches the method further comprising comparing the port

associated with each risk-assessment module with the stored third set of ports (see

abstract and col. 7, lines 48-60).

16.   Regarding claims 6, 13, and 20, in accordance with claims 5, 12, and 19,

respectively, Klaus teaches the method further comprising performing the vulnerability

checks of the risk-assessment module if the port associated with the risk-assessment

module matches at least one port of the stored third set of ports (see abstract and col.

7, lines 48-60).

17.   Regarding claims 7, 14, and 21, in accordance with claims 5, 12, and 19,

respectively, Klaus teaches the method wherein the risk-assessment module is disabled

if the port associated with the risk-assessment module does not match at least one port

of the stored third set of ports (col. 7, lines 56-60). Klaus discloses by use of the port

map, the ports that are not serviceable are disabled in order to speed up the security

analysis of the network.

Conclusion

18.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Kingsford et al, (U.S. 6,574,737) disclose a system test for penetrating a

computer or a computer network.

Todd, Sr. et al. disclose a method for network self security assessment.

Williams (U.S. 5,559883) discloses a method and apparatus for secure data

packet bus communication.

Gleichauf et al. (U.S. 6,301,668) disclose a method and system for adaptive

network security using network vulnerability assessment.

Beebe et al. (U.S. 6,226,372) disclose a tightly integrated cooperative

telecommunications firewall and scanner with distributed capabilities.

Holloway et al. (U.S. 5,805,801) disclose a system and method for providing

security against an intrusion in a network.

Kurtzberg et al. (U.S. 6,073,240) disclose a method and apparatus for realizing

computer security.

Orchier et al. (U.S. 6,070,244) disclose a computer network security

management system.

Jones et al. (U.S. 6,219,805) disclose a method and system for dynamic risk

assessment of software systems.

Porras et al. (U.S. 6,321,338) disclose a method of network surveillance

including receiving of network packets handled by a network entity.

Gaul, Jr. (U.S. 2001/0034847) discloses a network security method and system

for checking security of a client from a remote facility.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Benjamin A. Ailes, whose telephone number is

(571)272-3899. The examiner can normally be reached on Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jack Harvey can be reached at (571)272-3896. The fax phone number for

the organization where this application or proceeding is assigned is (703)872-3906.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

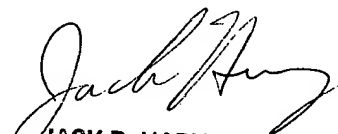Business Center (EBC) at 866-217-9197 (toll-free).

Communications via Internet e-mail regarding this application, other than those

under 35 U.S.C. 132 or which otherwise require a signature, may be used by the

applicant and should be addressed to [benjamin.ailes@uspto.gov].

All Internet e-mail communications will be made of record in the application file.

PTO employees do not engage in Internet communications where there exists a

possibility that sensitive information could be identified or exchanged unless the record

includes a properly signed express waiver of the confidentiality requirements of 35

U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published

in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG

89.

Benjamin Ailes
Patent Examiner
Art Unit 2142

JACK D. HARVEY
SUPERVISORY PATENT EXAMINER